



February 11, 1999

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR99-0435

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act, (the "act"). Your request was assigned ID # 121779.

The Corpus Christi Police Chief (the "city") received a request for the following information:

any and all memoranda, reports, internal communications, and/or documents associated with the International Association Chiefs of Police in the city's possession since January 1, 1998. This request includes any monthly reports or other documents associated with the association's study of the city's police department.

You state that you have made available to the requestor the responsive information in the physical possession of the city consisting of " (1) the proposal submitted by IACP; (2) the contract with IACP; and (3) progress reports submitted by IACP." You submit to this office for review the contract with IACP and the proposal submitted by IACP, information that you have made available to the requestor. You argue that information in the physical possession of the International Association Chiefs of Police ("IACP") does not meet the definition of "public information" as set forth in section 552.001(a) of the Government Code. You also argue that the information in the possession of IACP is excepted from disclosure pursuant to sections 552.106(a) and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) *for a governmental body and the governmental body owns the information or has a right of access to it.*" [Emphasis added]. Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. See, Open Records Decision No. 462 (1987); cf. Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Open Records Act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Open Records Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 at 2 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 at 3 (1989).

The Public Information Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). You represent that the city does not have access to the documents in the physical possession of IACP.¹ Documents created by IACP that are not required to be delivered to the City under the Police Resource Utilization Study Agreement between City of Corpus Christi and International Association of Chiefs of Police (the "agreement") are information not in the city's possession, and need not be delivered to the requestor.

Article 2 of the agreement with IACP states, in part, "[t]he entire study will be conducted in accordance with the response to request for proposals submitted by IACP, which is attached and incorporated by reference as if fully set out herein." Page 26 of the IACP's proposal lists a number of documents that IACP agrees to develop and deliver to the city, including interim findings and recommendations packages; in-progress interim findings and recommendations; draft and final reports; and implementation support packages. These documents are subject to the act and must be disclosed to the requestor.

¹You state, "Accordingly, the City asserts that since the second and third criterion listed in Open Records Decision No. 462 are not established, the documents in the physical possession of IACP are not public information."

The requestor asks for all documents “associated with” the IACP’s study. Although you need not provide to the requestor information that is not in the possession of the city, we understand the term “associated with” to include information provided by the city to the IACP as well as information provided to the city by IACP. Paragraph three of the agreement with IACP provides:

CCPD will provide IACP with all information, access to files and records, and use of all institutional facilities which may be necessary to the IACP in the performance of this Agreement, in accordance with the Texas Open Records Act.

In the course of preparing the report required by the agreement, IACP may have obtained information from the city and the police department pursuant to paragraph three of the agreement. Because the requestor asks for all documents associated with IACP’s study, any information obtained by IACP pursuant to paragraph 3 is information responsive to the request, and must be disclosed. *See* Open Records Decision No. 499 (1988).

You also assert that the documents being withheld from the requestor are excepted from disclosure under sections 552.106(a) and section 552.111 of the Government Code. On December 22, 1998, we asked you for copies of the records at issue. You responded on December 28 by stating that,

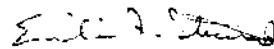
The City is not contractually entitled to receive any other documents from IACP and therefore, cannot supply the Attorney General with a copy of the specific information requested or a representative sample.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete as to the exemptions you claim under sections 552.106(a) and 552.111. Without the information requested from you, including the documents that were delivered to the city by IACP prior to the request for information and the documents provided to IACP pursuant to its contract with the city, this office is unable to evaluate these exceptions. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act as to (1) information obtained by IACP under the terms of the agreement and (2) information provided to IACP by the city. Open Records Decision No. 462 at 4 (1987). This information is presumed to be public. Open Records Decision No. 195 (1978).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 121779

Enclosures: Submitted documents

cc: Mr. James Suydam
Corpus Christi Caller-Times
P.O. Box 9136
Corpus Christi, Texas 78469
(w/o enclosures)